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REMARKS

Claims 18-30 are rejected under the judicially created doctrine of obviousness based upon U.S. Patent No. 6,456,883 issued to Torgerson et al. A Terminal Disclaimer is filed herewith as Exhibit A.

Claims 18-19, 21, 28 and 30 are rejected under 35 U.S.C. § 102(e) as anticipated by Torgerson. Applicants respectfully submit that since the Torgerson patent was assigned to Medtronic, it is not a patent "by another" under 35 U.S.C. § 102(e). Consequently, Torgerson should not be considered prior art to the Applicants' invention.

Claims 23-27 and 29 are rejected under 35 U.S.C. § 102(e) as anticipated by or in the alternative, rejected under 35 U.S.C. § 103(a) as obvious over Torgerson. As previously stated, the Torgerson reference should not qualify as prior art against the Applicants' claimed invention.

Claims 18-19, 28 and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,044,295 issued to Pilz. The United States Patent & Trademark Office (USPTO) also states that it is inherent that the communication circuit needs power to transmit data. The USPTO further asserts that one can argue that since the intent of the second power source of Pilz is to supply high current pulses when needed, and since the telemetry of data, as indicated by the Applicants, typically involves high current pulses, it would have been obvious to the implantable medical device designer to utilize the second power source for providing the power to communication circuit when needed.

Applicants respectfully submit that the USPTO has failed to meet the burden of proof necessary to establish an obviousness rejection under 35 U.S.C. § 103(a) since there is no discussion on the qualifications of a skilled artisan. The Federal Circuit has repeatedly stated that broad conclusory statements are not evidence. See, for example, KSR Int'l Co. v. Teleflex Inc., 119 Fed.Appx. 282 (Fed. Cir. 2005) [non-precedential], petition for cert. filed, 2005 WL 835463 (U.S. Apr. 06, 2005) (No. 04-1350). Withdrawal of the instant rejections and issuance of a Notice of Allowance is respectfully requested.

Respectfully submitted,

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11/7/05
Date

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